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Preface

The purpose of this study is to outline the main stages in the development of the regulatory regime for the Norwegian petroleum sector during a period of nearly 50 years as a basis for assessing its present and future roles.

The statutory basis for the regulatory regime is the petroleum act (1996) and the wide regulatory powers of the ministry of oil and energy (OED) therein contained. The objective is to ensure that the petroleum resources be exploited in accordance with the overall long-term interests of the Norwegian society and economy. Over the years, however, the regulatory regime has been in development, mainly to reflect the government's responses to national and international developments important to the petroleum sector. Three distinct stages determine the structure of this study.

The regulatory regime dates back to the 1970-80s when the Norwegian part of the continental shelf suddenly became a new and attractive hunting ground for large international oil companies. During the first 25 years a comprehensive regulatory system developed, based on the principles of wide regulatory, discretionary powers for OED, firm governmental control of all activities, and direct state participation through Statoil equal to ca. 2/3 of the new industry. Nos. 1 to 9 of the study deal with this first period.

At the turn of the centuries, the picture was quite different. Due to changes in the Norwegian resource base, unrest in international oil and gas markets, and new trends in world trade the petroleum sector had become less attractive to the oil industry. In addition, Norway had just joined the EEA agreement and the internal market of EU. Responding to domestic and EU concerns, in 2001-2002 the government reorganized the Norwegian system for state participation in the petroleum sector, thereby cutting the existing legal and economic ties between the state and Statoil, and simultaneously also reorganized the Norwegian trade and transmission systems for gas export to EU. The effects for the regulatory

regime and policies were far-reaching, constituting actually a clear break with key elements of the regulatory policies developed and pursued during the previous 25 years. The second part of the study (nos. 10 to 15) deals with these events.

During the recent 20 years, and in view of further structural changes in the international and national petroleum industry and the Norwegian resource base and on recurrently shifting oil and gas markets, Norwegian resource policy has focused mainly on maintaining the level of activities in the petroleum and offshore industries. One measure has been to diversify and broaden the mix of companies active in the petroleum sector by allowing also less resourceful international and national companies to participate in the petroleum sector, another to encourage exploration of available acreage consistent with current environmental and climate policies. These trends are the subject of the third part of the study (nos. 16 to 19).

This study has been prepared for inclusion in the introductory part of a new book "Oil and Gas Activities in Norway – Regulatory and Contractual Framework", written by a group of petroleum lawyers for publishing by Gyldendal during the fall 2019. I sincerely appreciate that the authors and the publisher have agreed that the study now appears in advance in MarIus.

Oslo, March 20, 2019
Erling Selvig

Contents

1 The three pillars

The basis for the Norwegian regulatory regime for the petroleum sector is that the ownership of all petroleum resources of the continental shelf belongs to the state. Accordingly, in order that the resources is to be exploited consistent with the overall long-term interests of the Norwegian society and economy, the King and the Ministry for Oil and Energy (*OED*) have been vested with wide regulatory powers. The objective of this regulatory regime is that the development of the petroleum sector and the exploitation of the petroleum resources continuously are subject to governmental control and its current resource management policies. **(1)**

The regulatory regime has its statutory basis in the petroleum act, 1996 (*PA*). The act, adopted in 1985 and revised in 1996, is a quite comprehensive piece of legislation. In substance, however, the act essentially is a structured and modernized codification of the main regulatory approaches and measures applied by the OED during and subsequent to the initial periods of Norwegian petroleum activities of the 1970–80s. After 1996, the petroleum act has only been subject of limited amendments, mainly to cater for needs to reorganize the state's direct participation interests and to adjust to new EU-directives (infra nos. 10–14).

The primary purpose of the petroleum act is to modernize and reaffirm in statutory form the legal basis for the wide regulatory powers of OED as regards both issuing implementing regulations and the adoption of specific regulatory measures in particular cases. **(2)** This approach means that the second and major substantive part of the regulatory regime now has its legal basis in delegated powers and in fact consists of supplements to the petroleum act set out in numerous implementing regulations issued over the years by OED.

The regulatory regime also has a third and most significant part, authorizing OED to adopt ad hoc regulatory measures on various matters emerging in the course of the actual exploitation of the particular petroleum resources. Numerous provisions contained both in the petroleum act and implementing regulations gives OED wide powers to adopt at

its discretion, consistent with ordinary principles administrative law, various specific regulatory measures at a case-by-case basis.

The key elements of the regulatory regime and its overall objective remain generally unaffected by subsequent structural developments in the petroleum sector over the years. The inherent flexibility in the regime generally allows OED to address any regulatory problems when surfacing, either as a matter of new implementing regulations or by specific regulatory ad hoc measures, based on timely adjustments to current resource management policies. These powers were important particularly during the initial 20–30 years of Norwegian petroleum activity when the international oil companies largely regarded such conduct and the resulting legal uncertainties as necessary for access to attractive Norwegian resources.

The recent 25 years however brought more nuanced attitudes. Structural changes in the Norwegian petroleum industry and its resource base, combined with recurrent unrest in oil and gas markets, made the Norwegian sector generally less attractive to foreign oil companies. This caused OED to adjust its regulatory approaches by cautiously restraining the use of discretionary powers and increasingly relying on formal rule-based regulations (infra no. 6). Moreover, during the recent 20 years, sustaining the level of activities in the petroleum and offshore industries has required responses adjusting regulatory policies previously pursued (infra nos. 15–17). Characteristic for this period are regulatory measures founded on an overriding regulatory principle of ensuring proper resource management in view of prevailing conditions in the oil and gas industry and the energy markets.

As a matter of law, there is no direct link between the regulatory regime and the special tax-regime for Norwegian and foreign oil companies, having its origin in the act on petroleum taxation of June 13, 1975. The objective of the tax regime is to ensure that even the major part of large yearly profits derived by the companies from petroleum activities on the Norwegian continental shelf, actually go to the state as the owner of the resources. However, the taxation regime also contains

various schemes designed to encourage company-based investments in field developments and new exploration activities in the petroleum sector.

2 The roles of the licensing system

The petroleum act leaves to the government to define the areas of the Norwegian continental shelf where petroleum activities may take place (PA § 3-1). Moreover, it is the task of OED from time to time to organize any petroleum activities within such areas by issuing to commercial oil companies exclusive licenses limited to geographically defined acreage (PA § 3-3). OED's statutory power to issue licenses is general and discretionary, to be exercised in particular cases by OED, generally at its discretion (PA § 3-5, cf. infra no. 8).

The licensing system primarily functions as one of the corner stones of the regulatory regime as developed over the years. The rules of PA chapters 3 and 4 on licenses and exploitation of licensed resources apply rather broad terms, and particularities are set out in implementing regulations issued by OED, in particular the "petroleum regulation" 1997 (*PF*). However, as the content of licenses issued is rather limited, the licensing practice is the basis for and a key to understanding the regulatory regime.

This licensing practice of OED, based on its discretionary powers, dates back to a situation where the Norwegian continental shelf suddenly became a new hunting ground for large international oil companies while the domestic industries remained at an infant stage. Its over-all objective was and still is both to promote Norwegian petroleum and offshore industries and, in this context, to safeguard generally national interests. Licensing practice as adjusted over the years and modified as required by the EEA agreement (PA § 3-3, § 3-5, PF § 10), contains key elements designed to achieving this.

The practice of OED is only to grant license jointly to a group of named oil companies as determined by OED, each with a fixed percentage

interest in the joint license. Every license also provides that the licensed activities constitutes a joint venture agreed between the participants in the group on the basis of a standard joint venture agreement (*JVA*) drafted by OED and attached to the license (PA § 3-3). According to the JVA, the joint activities is a matter for cooperation and shared responsibility among the group members (PA § 3-5) while, at the same time, the important task of actually carrying out the activities on behalf of the group as provided in the JVA, is allocated to an operator named by OED (PA § 3-7).

International oil companies, at times also private Norwegian companies, are regularly included in the license groups, primarily based on an assessment of their financial and technical capabilities.**(3)** However, in most license groups OED also retained a large percentage interest with specific prerogatives for the state itself (PA § 3-6). Already in the early 1970's the government established a state-owned incorporated oil company (Statoil AS) as the vehicle for management of the participation interests reserved for the state itself (infra no. 7). Since then Statoil, and after 2001 its substitute Petoro, has regularly been included in the license groups as a member and holder of the state direct participation interests with the voting power and state prerogatives attached thereto (infra no. 8). In order to strengthen the role of the state participation in the petroleum sector, OED also appointed Statoil as operator of numerous license groups.

The purpose of this licensing practice, no doubt, has been to make the standard JVA elaborated by OED a permanent regulatory instrument as a framework for the development of resources and activities in the petroleum sector consistent with Norwegian strategies. A direct effect thereof is that the initial legal position of licensees essentially follows from a combination of the provisions of both the operating license and of the JVA. **(4)** The provisions of JVA also enable Statoil (and later Petoro) as a member and the operator of a license group, when needed, to taking care of particular state interests in the current group activities. **(5)** This was important particularly during the initial 20–30 years of Norwegian petroleum activity when the international oil companies largely acknowledged such conduct as necessary for access to attractive

Norwegian resources. The present situation however is different, mainly due to structural changes in the industry and the resource base in the Norwegian sector (infra no. 16).

In addition, a long-term effect of OED licensing practice has been that Statoil, as manager and holder of the substantial state participation interests in most license groups, and as operator of a number of the groups, actually attained a key role during the founding period of the development of the Norwegian petroleum and offshore industries (infra no. 7). During the 1980–90's also two private-owned Norwegian companies, Hydro and Saga, was as possible competitors to Statoil, privileged participants in many licenses. However, the oil portfolios of these companies were, due largely to economic developments, subsequently acquired by Statoil. Statoil has since, and now as Equinor, retained much of its rather unique position in the Norwegian sector, notwithstanding the general transfer of the state's own direct participation interests to Petoro in 2001 (infra no. 13).

3 The roles of the JVA

The JVA-standards elaborated by OED is primarily a tool for allowing directly or indirectly continuous regulatory influence on the actual activities of the various license groups. The point of departure in the JVA is nevertheless that planning and implementing the licensed activities is a joint task of the members of each license group, thus allowing also for continuous transfer of international expertise needed. At the same time, however, the JVA lays down a detailed institutional framework for the joint venture operations of the license groups. **(6)**

The provisions of JVA specifies the organs of the license group, the rights and responsibilities of its members and the operator and, importantly, also sets out comprehensive procedures and rules for the members cooperation and decision-making regarding the joint operations. The

OED standard JVA has in fact been tailor-made for joint operating agreements comprising also substantial state participation interests with specific prerogatives, designed to achieving that decisions by license groups also be consistent with public interest and current resource-management principles. **(7)** Accordingly, for each of the license groups OED specifies the rules applicable on voting and majority requirements adapted to the number and participation interests of the group members.

The current standard JVA, which largely dates back to the adoption of the petroleum act 1985, covers all key stages of the group activities until expiry of the joint license. Thus, the JVA applies to the initial exploration of the licensed area, the plans for development of discovered deposits, the construction of infrastructure needed, the depletion of deposits, and the production period including mainland terminals for treatment and transportation of petroleum, except, however, marketing of the produced petroleum. How the various activities is actually handled by the particular license groups is, in the view of Norwegian authorities, essential not only as regards the economic benefits to be derived from the Norwegian petroleum resources, but also for the extent to which the petroleum activities actually will represent new markets for domestic industries as suppliers of goods and services. **(8)**

Instrumental in these contexts is the requirement that a license group wanting to develop resources discovered within the license area, has initially to prepare and submit a complete development plan (*PUD*) for approval by OED (PA § 4-2, PF §§ 20-21). A PUD outlines and evaluates matters regarding depletion policy, installations to be constructed, and the transportation arrangements for produced petroleum as well as the anticipated consequences for coastal waters and regions. OED may set conditions for its approval and thereby demand changes as warranted by proper resource management and other pubic interests (PA § 10-18). OED may also decide that pipelines and other special infrastructure needed for treatment and transportation of produced petroleum can only be put in place and used according to a specific license granted under PA § 4-3 (infra no. 4).

No doubt, the provisions of PA §§ 4-2 and 4-3 have over the years proved to be most effective regulatory tools for the implementation of current petroleum policies. **(9)** After approval by OED, the PUD is binding and constitutes the framework for the joint activities subsequently carried out by the license group as provided for in the JVA.

4 Transportation and treatment of petroleum

The need for installations for transportation and treatment of produced petroleum, whether at mainland terminals or offshore, is usually also outlined in the PUD according to PA § 4-2. However, this part of the plan is in most cases not covered by an approval of the PUD itself. The regulatory issues remaining is to be specifically addressed by OED and decided by the issue of a separate license as required by PA § 4-3. **(10)**

One reason is that such infrastructure may also be used to meeting any present or future demands for access to equivalent services from other field developments, at any rate if in advance adapted to future requirements. Joint use of established infrastructure generally allows for substantial cost saving and efficient resource management. Third-party access to such infrastructure and pipelines has been provided for in PA § 4-8 (infra no. 15).

Another reason is that OED also wants specifically to address regulatory issues such as ownership, tariffs and the license period, due to the inherent strategic value of existing infrastructure in a Norwegian context. Regulatory reasons generally justify that license to own, construct and operate strategic infrastructure be granted jointly to a new and independent license group as determined by OED, rather than to an already existing license group operating a petroleum-producing field. Accordingly, PA § 4-3 licenses is now the basis both for the important costal terminals with infrastructure used for landing and processing

of petroleum prior to export from Norway, and for the various parts of the complex Norwegian up-stream pipeline system for gas export to European states (infra nos. 9 and 14).

The OED practice is that a § 4-3 license is granted jointly to a new license group as determined by OED and is subject to the approval of a separate plan (*PAD)* for owning, constructing and operating the licensed installations by this group. **(11)** A separate JVA is attached to the joint license (PF §§ 28-29). Regularly OED also retains a large percentage interest in an infrastructure license with specific prerogatives for the state itself. In order to cater for the need for coordination or cooperation as regards the use of available infrastructure, OED named Statoil as the operator for most of the infrastructure-groups. Now, the manager of the gas transmission system Gassco handles these matters (infra no. 14).

5 The step-by-step approach of the regulatory regime

The regulatory measures based on the licensing system and the use of standard JVAs cannot, on a stand-alone basis, be regarded as tools sufficient to achieve that also the actual exploration and exploitation of the petroleum resources as subsequently carried out by the licensees, is subject to adequate governmental control and consistent with government policies. In addition to the operating license according to PA § 3-3 and approval of development plans according to PA §§ 4-2 and 4-3, other regulatory requirements follow from PA §§ 4-1, 4-4, 4-8 and 4-11 and, in particular, from a number of implementing regulations adopted by OED. In fact, the regulatory regime as such reflects a "step-by-step" approach in the sense that the actual implementation of the various stages of the licensed activities continues to be subject recurrently to *additional* regulatory permits, approvals or consents from OED and to any tailor-made conditions therein contained. **(12)**

This means that the regulatory powers of OED are nearly all inclusive. Even if particular powers be delimited in scope and time and to some extent also are overlapping, the legal reach of the various powers is in most cases wider than needed in particular cases as basis for the regulatory measures feasible in view of current practical, economic and resource-policy considerations. Since these provisions rarely contains specific conditions or delimitations, they generally leaves for OED to decide in each case at its discretion, consistent with ordinary principles administrative law, whether or not to give particular permits or consents continuously required.

Nevertheless, such discretionary powers are not without limitations. Thus, there is limited room for unwarranted differentiation between equal cases. In general, the use of regulatory powers must also be proportionate so as not in essence to hinder actually or commercially the exploitation of discoveries within the licensed area. Further, a consequence of the "step-by-step" approach is that requests for new permits or consents needed by the license group, has to be decided by OED with due regard to the earlier approval of the PUD or PAD and other regulatory decisions already made. According to the act on public administration § 35, a new decision by OED essentially altering a previous decision unreasonably to the detriment of the licensees, can be set aside unless warranted by significant resource policies or other state interests. Consequently, the need of licensees for further permits or consents does not give OED an unrestricted discretionary power also to cancel or review previous permits or consents or to attach new conditions thereto.

6 Regulatory technics

The regulatory regime presupposes that OED largely exercises its regulatory powers on a case-by-case basis. This does not mean that OED itself has to ascertain the facts relevant when to consider whether to

issue the permit, approval or consent needed by the group. Generally, it is for the license group or its operator to submit a particular request to OED providing all information available and outlining the course of action proposed by the group compared with alternative solutions. Thus, the task of OED is to evaluate the case as presented by the group and to decide whether to deny or approve the measure wanted or, as in most cases, to consider imposing changes by tailor-making conditions to an approval (PA § 10-18). In general, it is to the advantage both of the license groups and of OED that, as provided in the JVA, the preparatory work to the extent possible originates at the group level. Decision-making may nevertheless be both time-consuming and difficult.

OEDs handling of comprehensive and complex requests relating to key stages of field developments such as the PUD, PAD or a plan for removal of installations proposed by a license group, usually based on volumes of documented information, may of course be both extensive and lengthy. To simplify the procedures, OED has issued detailed regulations on the documents to accompany such requests. Usually, however, this does not remove the need for a follow up by dialogues and meetings in OED before decision on the request.

The use by OED of particular regulatory powers on a case-to-case basis during current license activities has also proved to be administratively demanding. In recent years, OED has consequently focused on increasing its use of rule-based measures provided for in implementing regulations. Examples are the OEDs regulations on agreements and tariffs for third party use of already existing infrastructure such as the gas transportation system or particular field installations, cf. PF chapter 9 and the 2005 TPA regulation (infra nos. 14 and 15). The consultation procedure ahead of the issue of implementing regulations also contributes to the transparency of the regulatory regime.

7 The state's direct participation interests

In the early 1970s, shortly after the first discoveries of petroleum resources on the Norwegian continental shelf, the state as owner of the resources decided to participate in the petroleum industry through the holly state-owned oil company Statoil AS. Accordingly, OED regularly allocated an interest of at least 50 percent in all licenses to Statoil as member of the license groups (supra no. 2). The standard JVA also attached voting rights and economic prerogatives to the interests held by Statoil on behalf of the state, notably by exempting Statoil from liability for exploration cost, and by an option for Statoil to increase its participation interest up to 70-80 percent if the license group decided to develop a field discovered. **(13)** Holding a key role and usually a majority vote in the decision-making of groups, Statoil initially also served implicitly as a regulatory instrument. Accepting this system was a condition for access to attractive Norwegian resources.

This regulatory practice, however, caused national concerns. In 1985, after 10-15 years of rapid and formidable growth, Statoil actually was in control of the major part of the Norwegian petroleum industry. This appeared to be detrimental to a balanced development of the petroleum and offshore industries and to the implementation of regulatory policies by OED. The production of oil and gas over the years had then reached a high level. Consequently, Statoil would soon also attain an economic power and a cash flow quite disproportionate to the small economy of Norway and to the limited funds actually received by the state from its participation interests.

In 1985, the new petroleum act and a revised standard JVA removed these concerns. **(14)** The regulatory objective was to have the state's participation in the oil industry through Statoil clearly separated from its regulatory functions. The act was to achieve that the petroleum sector be subject only to regulatory powers following from the act itself, and that applying these powers was a task for OED. Hence, in the future handling of the total state-owned interests in a license Statoil was to act merely

as any ordinary commercial oil company subject to the new standard JVA, having no regulatory tasks. Accordingly, the new JVA reduced the ordinary voting power of Statoil by new majority requirements based on combinations of minimums of numbers and of participation interests, stipulated for each license group so as to ensure that in current cases Statoil alone neither had a majority vote nor a veto right. Statoil was to retain a majority vote only in matters of principle or particular importance and only if so authorized case-by-case by OED acting as Statoil's general meeting.

More important, no doubt, was that the government at the same time decided that the state participation interests accumulated in Statoil's portfolio of existing and new licenses be internally split economically in two parts, the larger part for the state itself and a smaller part retained by Statoil. **(15)** This quantified the quite substantial build-up of the State's Direct Financial Interests (*SDFI*) in the petroleum sector, and provided a basis for defining the proportion of the total yearly petroleum earnings of Statoil which actually belonged to the state. In brief, the primary purpose of the split was to achieve that the state actually received and could dispose its substantial part of Statoil's yearly earnings as ordinary state funds and, at the same time, also to contain the growth of the economic strength of Statoil in relation to the offshore supply industry. An implication of this split was, however, that economic consequences of OED's future regulations of the petroleum sector also became and since remained matters directly of concern to the Ministry of Finance.

The purpose of these changes was not to achieve significant changes in the over-all level of state participation, but to redefine Statoil's roles as manager thereof. In addition, the changes meant that the split of the total state-owned interests between the state and Statoil be determined at the issue of new group licenses. A consequence of the revised JVA was, however, that the option to increase the total state participation interests in a license be restricted since OED already at the approval of the PAD had to stipulate the final percentage interests of the state and the other participants in the license group. Due to simultaneous unrest in the

energy markets, even other limitations on the prerogatives attached to the state participation soon followed. **(16)**

This first reorganization of the overall state participation in the petroleum sector met the needs of its time, reflecting a balance between conflicting national views mainly on the future roles of Statoil. In 2001-2002, after another 15 years and Norway's accession to the EEA agreement, however, the system for the over-all state participation again was ripe for a thorough overhaul, then based on new regulatory approaches (infra nos. 10–14).

8 The EU license directive

EU's license directive (94/22/EF) as included in the EEA agreement did not itself entail significant changes in the Norwegian licensing system and direct state participation in the petroleum sector. This directive articles 2 and 6 generally confirmed Norwegian authorities' right to grant petroleum licenses with conditions consistent with current policies on resource management and other public interests (PA §§ 1-2 and 1-3, PF § 11). Nevertheless, there was a need to redraft existing statutory and regulatory rules so as to reflecting expressly the more elaborate requirements of the directive. The amended rules are now incorporated in PA §§ 3-3 to 3-7 with supplementing details in PF §§ 7 – 12. **(17)**

Certain of these provisions, however, deal with matters also relating to the four freedoms of the EU Treaty and the role of the petroleum industry in the internal market. The implicit purpose thereof apparently was to prevent states from using regulatory powers to promoting its national petroleum and offshore industries. Incorporated in the Norwegian regulatory regime, these provisions gradually affected regulatory practice, also by reinforcing the split between the state and Statoil created already in 1985 (supra no. 7).

The license directive article 5 requires generally that criteria for granting petroleum licenses are to be objective and non-discriminatory (PA § 3-3, PF § 10), but, if announced in advance, a defined participation interest in each license may still be reserved for the state itself (article 6). The state may also use Statoil as holder and manager of its direct participation interests, but Statoil, even if state-owned, may be granted own participation interests only if applying in competition with other oil companies Article 6 no. 3). The condition was, however, that new and apparent procedures established a clear separation in economic terms between Statoil's role as participant and as manager of the participation interests of the state.

In addition, the directive article 6 no. 3 contains detailed rules on voting rights attached to the state participation interests and Statoil as the manger thereof, now implemented in PF § 12. Generally, the basis for voting is transparent, objective and non-discriminatory criteria and ordinary commercial considerations. Both the state and Statoil may exercise the voting rights attached to each of their participation interests, but the sum thereof can in no case constitute a majority in the license group (cf. supra no.7). However, the state, or Statoil as its manager, has no right to vote on issues relating to the supply of goods and services to the group. The purpose of these voting rules, no doubt, is to enhance commercial competition in the substantial supplier-markets having emerged in the petroleum sector.

9 The sale of Norwegian gas

The marketing of produced petroleum is not a JVA task of the license groups. Each participant in a group is entitled to a proportionate part of petroleum produced (PA § 3-3), and has as owner a duty to lift and market or otherwise dispose of its share of the production. A difficulty here is that most Norwegian discoveries are combined oil and gas fields

generally requiring simultaneous depletion of the oil and the gas. While oil can be disposed as produced at any time by successive sales in the international oil markets by each participant, the gas, however, has not been readily saleable when produced. The regular markets for Norwegian gas are limited, mainly located in West-European states. In addition, commercial and regulatory practice usually requires joint disposal of all gas from a field be arranged before the license group actually can decide to develop its discovery. Accordingly, the standard JVA provides that the group shall endeavor to have all the gas from its field sold en bloc ahead of production by long-term depletion contracts, negotiated with buyers by Statoil on behalf of and in consultation with the other participants. **(18)**

This system means that Statoil early held a key position in the marketing of Norwegian gas, not only the gas belonging to Statoil and the state. The counterparts to Statoil, however, were large European gas companies with substantial market power. Consequently, the gas markets were both limited and with implied risks of oversupply and shortage of gas transmission capacity. As this also entailed competition between different Norwegian discoveries with gas, OED impliedly established priorities when considering approvals of PADs for new development projects, thereby delaying also depletion of the oil resources discovered.

In the late 1980's, the license negotiation committee system of JVA was replaced by a national Gas Negotiation Committee (*GFU*), also chaired by Statoil. **(19)** After the discovery of the huge gas field Troll, in 1986 Statoil negotiated and concluded the Troll Gas Sales Agreement for long-term delivery to European buyers of quite substantial yearly quantities of Troll gas. However, TGSA allowed the sellers wide options for delivery of substitute gas from other Norwegian gas fields. This permitted extensive deliveries under the TGSA also of quantities of associated gas from various other fields and, at the same time, prevented depletion of the gas reserves of Troll inconsistent with its important role as a guarantor for future supply of gas to Europe.

TGSA soon served as model for the new principles for future marketing of Norwegian gas subsequently agreed by the parliament (Stortinget). In 1987, OED asked Statoil, Hydro and Saga to constitute

the GFU-committee by an agreement for subsequent approval by OED. The task of GFU was to negotiate long-term field neutral sales of defined quantities of gas from the Norwegian continental shelf. In practice, a gas contract negotiated by GFU was, consistent with current development strategies and pipeline capacities, subsequently allocated by OED to a delivery field for signing by the participants of its license group and future contract deliveries of gas as produced. **(20)** However, the question whether the GFU agreement as approved by OED also became legally binding for the gas exporting companies not parties thereto was never tested.

A steady growth of gas export to European destinations created recurrently a need for new pipelines and land-based gas handling terminals. At the turn of the century, all essential parts of an entire gas transmission system for the areas south of the polar circle were completed. The various parts were as added to this new infrastructure, licensed according to PA § 4-3 to several license groups, each owning its licensed part thereof. Although Statoil was the operator for the entire gas transmission system, the lack of coordinated ownership and tariffs for the many parts of the system was detrimental to efficiency. This was a problem eventually resolved after an overhaul of the regulatory regime for the petroleum sector carried out by the government during the period 2001–2002 primarily to meet requirements entailing from the Norwegian accession to the EEA agreement in 1994 (infra nos. 11–14).

10 The impact of EU/EEA requirements

Generally, the objective of significant changes in the regulatory regime since the 1970s has been to counter domestic consequences of the comprehensive state participation in the petroleum sector and the use of state-owned Statoil as the manager thereof. Initially, Statoil acted as owner of the state's majority interests in most license groups, but in 1985 the government redefined Statoil as a commercial oil company and established

internally a split between the participation interests of Statoil and of the state (supra no. 7). Yet, Statoil retained its dominant position, remaining the manager of the overall state participation interests, and the operator of more than half of the license groups in the petroleum sector. The EU license directive (94/22/EF) as implemented after Norwegian accession to the EEA agreement did little to change this. It merely introduced a regulatory split between the participation interests of the state and Statoil and some restrictions on voting powers, and provided EU companies non-discriminatory access to the petroleum sector (supra no.8).

The license directive, however, was still of importance because it evidenced that EU generally considered the petroleum sector and the energy markets as part of the European internal market. This implied that further regulatory measures in these sectors also be part of the current EU process for implementing the internal market in the 1990s. For Norway as a party to the EEA agreement, this created concerns and uncertainty. The main question was whether the Norwegian regulatory regime and practices for the petroleum sector, including the system for the over-all state participation, would generally be compatible with new EU regulations based on internal market principles.

In brief, gas proved to be the big problem. For Norway, continuity in the yearly gas export to EU states was essential. While recognizing the importance of gas import from Norway, EU however regarded the close connection established between the tailor-made Norwegian system for gas export to key European states and the national structures for gas distribution in the importing states as a problem because of detrimental effects for the functioning of national gas markets and an internal EU market for gas. Already in 1998, EU adopted a new directive (98/30/EF) as a first measure to address these problems.

The new gas directive contains common rules for the organization of national gas markets and for access to EUs internal market for natural gas. This regime itself was of little concern to Norway, having no domestic gas market. However, to open EU's gas markets for competition between alternative gas suppliers, this directive also provided for third party access to up-streams gas pipelines supplying gas to European markets (PA

§ 4-8), also the Norwegian gas transmission system. **(21)** This threatened the strong market position in EU already held by Statoil itself and by the existing Norwegian long-term gas sales contracts negotiated with European buyers by Statoil and by GFU. The consequences could be quite detrimental if the future role of Norwegian gas export in the European markets remained to depend on Statoil's strong market power as the manager of the overall state participation gas resources, the chair of the national Gas Negotiation Committee (*GFU*) and the operator of the Norwegian gas transmission system (supra no.9).

Obviously, the comprehensive state participation through state-owned Statoil, developed over the years, no longer remained mainly a national matter. Nor was this matter, as addressed by the then on-going Norwegian public debate, merely a question of the future of Statoil as a state-owned or privatized, national or international oil company. In brief, state participation through Statoil, and particularly the various regulatory consequences thereof developed over the years, had become a serious problem as not easily reconcilable with the principles of the new European internal market. **(22)** A failure to face the emerging issues definitely implied a risk of deterioration of the future relations between EU and Norway as EEA state. A particular concern was that soon after the adoption of the gas directive the EU Commission (*EUC*) had seriously questioned the legality and the effects on the internal market of the Norwegian system for the existing and future gas export to EU states (infra no. 12).

11 The EEA package of regulatory changes

The Norwegian government, apparently regarding time as of essence, decided to address the emerging EU problems in advance. In fact, the government adopted and implemented a whole package of important regulatory changes 2001–2002, mainly to adjust the regulatory regime

to the principles of EU's internal market, but in a manner reflecting also national demands. **(23)**

In June 2001, prompted by the EU gas directive (supra no. 10), the government issued a regulation immediately repealing the GFU system of 1987 (infra no. 12). This was not a stand-alone change, and other important regulatory changes needing comprehensive implementation were soon to follow. **(24)**

During the spring 2001, the government had decided to reorganize the Norwegian system for state participation in the petroleum sector. The main purpose was to remove all remaining direct, legal, economic and regulatory ties between the state and Statoil (infra no. 13). At the same time, it also decided to completely reorganize the gas transmission system (infra no. 14). The mere drafting of the statutory and regulatory provisions required to implementing these measures was no easy task. In addition, the questions of principle inherent in the new legal framework needed decision or approval by Stortinget.

For the regulatory regime, the consequences of these decisions proved to be far-reaching, denoting actually a break with the past and the beginning of a new regulatory area. Essentially, all this meant a definite change of key elements of the regulatory approaches and the regulatory regime as developed during the first 25 years of the Norwegian petroleum industry. Unavoidably, this also entailed quite significant legal and other changes for Statoil, affecting its future role the Norwegian petroleum sector (infra no. 13). Moreover, after 2000 the new approaches also proved gradually to significantly influence OED's exercise in general of discretionary regulatory powers in parts of the regulatory regime not directly affected by the changes. Simultaneous unrest in the international energy markets and structural changes in the Norwegian petroleum sector again contributed to adjustments of regulatory practices since continued access to Norwegian resources no longer was equally attractive or important for the international oil companies (infra no. 16).

The immediate and paramount cause of the 2001–2002 changes in the Norwegian regulatory regime appears to be developments in the internal energy market in EU. In hindsight, however, these regulatory

changes and their consequences in fact constituted the first, but definitely a major and timely step in adjusting Norwegian policies for the petroleum industry and offshore industry to effects of the international globalization, particularly in the energy and financial markets. There was more to come (infra no.16)

12 The end of GFU

The repeal the GFU system in June 2001, prompted by the EU gas directive (98/30/EF), enabled each owner of gas produced at the Norwegian continental shelf to negotiate and conclude individual sales of its share of the gas from the various fields. By adopting this directive, EU demonstrated its determination to open EU's gas markets for competition between alternative gas suppliers by providing for third party access to up-streams gas pipelines supplying gas to European markets, including the Norwegian gas transmission system (supra no. 10). Obviously, this was a directive to be included in the EEA agreement, requiring third party access to be implemented in PA § 4-8(1).

Nevertheless, this was not end of story. Having earlier questioned the legality and the effects on the internal market of the Norwegian system for gas export, the EU Commission (*EUC*) also formally pursued its views by issuing June 12, 2001 a "Statement of Objection" to Statoil and Hydro as the members of the GFU and other Norwegian companies having sold gas on GFU contracts (supra no. 9). The EUC maintained that the existing gas contracts were invalid because negotiating joint sales of Norwegian gas to European buyers constituted a breach of the competition rules in the EU treaty article 81 and the EEA agreement article 53, detrimental to the European internal market. The government, however, never became a party to the GFU case since it had repealed the GFU June 1, 2001 before EUC issued its "Statement of Objection".

The GFU case raised questions of principle on the competence of EUC to enforce the EU or EEA completion rules as well as the question

whether the method applied by OED to establish the GFU system (supra no. 9) actually made GFU a part of the Norwegian regulatory regime, legally binding for all sellers of Norwegian gas. Another question was whether, as argued by EUC, the maintaining of GFU after accession to the EEA also amounted to a breach by Norway of the EEA agreement. The Norwegian reply was that the GFU system was essential to Norwegian resource management and that GFU, established consistent with the principles of petroleum law, imposed a legal obligation on all sellers of gas from the Norwegian shelf to comply with the GFU system. Regardless thereof, there existed a substantial risk that EUC actually brought the GFU case before the European Court of Justice to have the validity of these questions decided and severe penalties imposed on the gas-selling companies.

In July 2002, after an unusual and pragmatic compromise, however, the EUC closed the GFU case, leaving nearly all of these legal questions unresolved. In a settlement agreement negotiated between the EUC and the Norwegian companies, the gas-sellers, merely undertook to "negotiate individually when existing supply relationships with customers in the EEA" were subject to review. Norway, by repealing GFU, had already recognized that in the future Norwegian gas be sold individually by each producer and supplier of gas. **(25)** For EUC, having reached its main objective, this was sufficient to refrain from taking legal action in the EU courts. Even the prospect of the other changes to the regulatory regime being made by the government, may have contributed to EUC closing the GFU case (infra no.13–14).

13 A new regime for state participation without Statoil

Reorganizing the existing system for state participation in the petroleum sector, the government first decided to privatize Statoil into a public

company listed on the stock exchange, the state retaining a majority position in Statoil ASA. **(26)** Breaking all legal ties between the state and Statoil was a measure to denote not only that Statoil no longer was to be a tool to contribute to the implementation of petroleum policies, but also establish a clear distinction between the roles of the state as regulator and as holder of direct participation interests in the petroleum activities. In addition, Statoil ASA, while to remain a most important company in the national petroleum sector, would in the future actually appear as an independent commercial European oil, gas and energy company, capable of commercially asserting itself when participating and competing in international markets. However, these objectives also presupposed that the system for management of SDFI be reorganized, particularly to replace Statoil as manager thereof.

Second, the government consequently established a new state-owned company, Petoro AS, to serve as the future caretaker of the commercial matters of the restructured SDFI and the formal holder of the state's participation interests as a member of the JVA of the various license groups. In contrast to the previous manager Statoil, however, Petoro was not to develop into a new state-owned oil company. **(27)** According to a new PA chapter 11, the task of Petoro is merely to act on behalf of the state as the legal owner of the participation interests of the reconstructed SDFI and later acquired by the state and included therein (PA § 11-2). However, consistent with the license directive article 6, the sales for the state of all its oil and gas remained a task for Statoil, sustaining thereby its market position when in the future marketing the major part of Norwegian oil and gas. Importantly, Statoil also remained as the operator of most of the license groups active in the Norwegian petroleum sector.

Third, the new legal split between Statoil and the State also required a revised distribution between Statoil and the state of the total state participation interests in the petroleum sector accumulated in Statoil over the years. The result of the restructuring of SDFI, implemented by a package of transactions between Statoil and the state, was that the state retained ca. 80 % of its existing participation interests and in fact substantially increased the state participation interest in existing

infrastructure, particularly in the gas transmission system. Statoil, however, acquired additions to its participation interests in important gas-producing fields. **(28)**

14 The gas transmission system owned by Gassled

1) As a further measure to meeting the particular concerns of EU based on the gas directive (98/30/EF) as well as important national demands for an efficient gas export system, the government also decided to transform the Norwegian gas transmission system to open generally for third party access by all EEA users (PA § 4-8(1)). **(29)** To facilitate this the government, in connection with the privatizing Statoil and restructuring the SDFI, also decided to substantially increasing the SDFI ownership to nearly a majority share in the gas transmission system by acquiring participation interests from Statoil. In addition to Petoro and Statoil, however, even a number of other members of the several license groups granted joint licenses over the years according to PA § 4-3, still owned participation interests in the various parts of the gas-transmission system. The resulting lack of coordinated ownership and tariffs for the different parts of the system, however, was in the view of OED detrimental to its efficiency and to the third-party access to the system. To avoid problems in the future, it was necessary for the entire system to have only one owner.

At the request of OED in June 2001, the members of the various license groups owning parts of the gas transmission system, including Petoro and Statoil, elaborated and, late 2002, concluded an agreement on a joint venture, Gassled, as the new owner of the entire gas transmission system. Each of the members was to transfer to Gassled all existing ownerships interests in gas transmission infrastructure in exchange for one consolidated participation interest in the new JVA. This agreement and the

consolidated ownership shares of each of the companies in the JVA for Gassled was approved by OED Dec. 20, 2002 (PA § 10-12). The result was that nearly half of the participation interest in Gassled belonged to SDFI, but Statoil still held a large own participation interests in Gassled. **(30)**

Consequent on privatization of Statoil in 2001, the government also decided to replace the operator of the various parts of the gas transmission system, Statoil, by the new state-owned Gassco AS, being a neutral operator without ownership interests in Gassled or the gas transmission system. **(31)** At first, Gassco had certain delegated regulatory power to act as operator for the various parts thereof according to PA § 3-7, cf. § 4-9. Subsequently, Gassco assumed, as operator for the new owner Gassled, the paramount responsibility for the operation of the entire gas transmission system according to the new regulatory framework adopted by OED according to PA §§ 10-18, 4-8 and § 4-9, cf. PF chapter 9. **(32)**

2) Approving the Gassled agreement, OED simultaneously adopted Dec. 20, 2002 two comprehensive regulations on third party access to the system. The basis for this regulatory regime was that Gassled in fact constituted a monopoly and, consequently, that all of the users would be dependent on third party access to the gas transmission services of Gassled.

One of OED's regulations established an entirely new regulatory regime for third parties access to the various parts of the Gassled gas transmission system operated by Gassco (PF chapter 9). This regime essentially implements EU's gas directives (98/30/EF and 55/2003/EF) in Norwegian law. Consistent with the general rules on third party use of existing infrastructure in PA § 4-8, PF § 61 outlines a system for regulated-contract access on non-discriminatory terms for users with substantiated demand for transmission services supplied by Gassled, and specifies the contracting procedure to be followed. By bookings to Gassco users may reserve the needed capacity defined by volume and time and, if confirmed as available, conclude contracts with Gassco on behalf of Gassled. **(33)** The Gassled contracts are based on a standard form contract approved by OED (PF § 65), but with tariffs determined

by the regulated tariff system adopted by OED (PF § 63). Consequently, such contracts do generally not require approval by OED (PF § 65).

The other OED regulation of Dec. 20, 2002 no. 1724 established new regulated tariffs for future Gassled contracts, tailor-made for each of the several parts of Gassled consistent with the guidelines for tariffs in PF § 63. The tariff for use of Gassled infrastructure is an important exploitation cost for the license groups owning the resources. Consequently, future tariffs are generally not to exceed what is required for the repayment of the infrastructure investment of the owners and in addition a reasonable return on invested capital (PF § 63, cf. PA § 4-8). The purpose of the tariff regulation was to achieve efficient implementation of this principle in the Gassled tariffs. **(34)**

The Gassled tariff system generally reflects the tariff levels previously approved by OED over the years as new pipelines and other infrastructure became parts of the gas transmission system (supra no. 9). The OED policy, consistent with proper resource management, has been to limit the returns on infrastructure investments and, thereby the level of tariffs. The objective is to ensure that the major part of earnings from the exploitation activities of the various license groups actually be retained by these groups instead of being transferred as earnings to the license groups owning the infrastructure used. Previously OED had only approved proposed tariffs in cases where the net present value of the total payments according to the tariff during the entire license period reflected a level of real return before tax not exceeding ca. 7 % of the capital actually invested in the infrastructure. **(35)** As confirmed in the Gassled tariff case (HR-2018-1258-A), this practice also was the basis for the tariff system for Gassled.

3) In 2010–2012, the ownership structure of Gassled changed since most private owners transferred their shares, in total 45 %, to four investments companies. In June 26, 2013, OED adopted a new regulation on regulatory tariffs for future Gassled contracts, and, subsequently, the four investors brought an action against the government asking for a declaration that the tariffs in this regulation were invalid. They asserted that the new regulation (1) did not comply with the rules on change of tariffs in PA § 4-8(2), and (2) provided tariffs for the period until

expiry of the Gassled license in 2028 which were significantly lower than expected and as provided for in the regulation of 2002. Allegedly, this caused significant loss to the four investors even if the 2013 regulation only applied to new Gassled contracts for gas shipped after Oct. 1, 2016. In the present context the points of interest are:

The Supreme Court **(36)** first held that PA § 4-8(2) only applied to changes of tariffs in existing individual contracts and, second, that the applicable provision was PF § 63(4) containing the guidelines for new regulatory tariffs for future Gassled contracts. In the opinion of the Court, the levels of return reflected in pipeline tariffs previously approved by OED constituted a reasonable standard for what would be "reasonable return on invested capital" according to PF § 63(4), and that this also was an appropriate guideline for the discretion to be applied by OED when elaborating new Gassled tariffs. As the new tariff regime generally complied with the guideline inherent in PA § 63(4), the Court rejected the claim that the new tariff regulation was invalid. Importantly, the Supreme Court also stated that, generally, it was not the task of courts to review the assessments as to the actual level of tariffs made by OED when elaborating new regulatory tariffs consistent with the guidelines in PF § 63(4).

Furthermore, the Court held that proper resource management in general justified the adoption of new tariffs for Gassled to avoid that OED's target level of maximum 7 % real return before tax being exceeded, having regard to the Gassled tariffs already paid and the new tariffs remaining to be paid during the license period for Gassled. This applied even in the absence of evidence on specific resource management effects of the lower tariff levels for Gassled. In addition, when approving the transfers of the participation interests to the four new owners, OED had informed that OED by future regulation might change the then existing tariffs.

15 Third-party use of existing field installations

1) Consequent on structural changes in the Norwegian petroleum sector and industry, at the turn of the century, third party use of existing field installations became a subject of paramount importance to Norwegian resource policies. Even if a field installation generally is constructed for handling own resources, available or additional capacity opened for multiple use, reuse or renewed use by neighboring fields, entailing cost and investments savings to encourage developments of earlier or new small and medium-sized fields, particularly if based on subsea development. The regulatory regime for Gassled (supra no. 14), however, does not apply to third party use of field installations not parts of the gas transmission system, and such third party use remained governed only by the principles in PA § 4-8 (1) and (2). Consequently, in 2003 the government decided to modernize PA § 4-8(2) and strengthen the regulatory powers of OED on approval and regulation of tariffs and conditions in agreements for such third party use. **(37)** In view of the increased demands for cost-saving third party use of existing field installations, the purpose was, consistent with proper resource management, to facilitate third party use and thereby to contribute to new exploration and development sustaining the level of activity in the petroleum sector.

As amended, § 4-8 provides for third party use of field installations by contract negotiated by the third party and the license group owning the installations, approved by OED according to § 4-8(2). In most cases, however, negotiations often is a time-consuming matter since the contract needed usually is rather comprehensive. Receiving production from another field requires new pipeline connections to and other adjustments on the host installations likely to interfere with the host's own production, and the yearly tariff payable by the third party for the services provided at the installation frequently becomes the key question. Generally, the owner of the host installation has the stronger bargaining position since limited number of neighboring installations usually means that the only

alternative for the third party is to install the capacity needed at own field installations at substantial cost and investment. This is a situation not inviting to agreement, but rather to conflicts.

In contrast to the Gassled regime, PA § 4-8(2) merely contains the broad principles for contracts on third party use of field installations, leaving thereby to OED to intervene in the particular case when to approve an agreement or, ultimately, to resolve deadlocks or counter excessive demands by the host installation. Inspired by the Gassled regime, consequently, OED decided to implement the principles of § 4-8(2) by a new regulatory regime for contractual third party use of existing field installations contained in a regulation of Dec. 20, 2005, followed by a new and revised version in 2013 (*TPA-regulation*). The main purpose is to assure that, consistent with proper resource management, capacity for services at existing field installation would be available to third party users on foreseeable terms, and that contract tariffs are only to cover the cost and profit elements enumerated in TPA. **(38)**

2) The TPA regulation generally leaves some flexibility to the parties. Its aim is to promote agreement by regulatory procedures for efficient and time conscious negotiations (§§ 5-8) and conclusion of contracts based on a standard contract form issued by OED (TPA § 10). The most important regulatory part of TPA, however, is TPA § 9(3) containing an exhaustive framework of detailed rules and limits to be complied with by the parties when to negotiate and determine the third party tariff. While the terms of TPA § 9(3) as drafted hardly provide ready-made answers in particular cases, TPA § 13 allows either of the parties to ask OED to decide disputes on the application of TPA § 9(3). In any event, TPA § 9(3) in fine confirms OED's power to intervene ex officio by stipulating and amending tariffs and other conditions of the contract pursuant to PA § 4-8(2). **(39)**

The regulatory power of OED pursuant to PA § 4-8(2), and of TPA § 9(6), may be exercised "to ensure that projects be executed when warranted by proper resource management and that the owner of the host installation is provided a reasonable profit having regard to investment and risks" (My translation). In the Gassled case (supra no. 14), the Supreme

Court stated that the terms "reasonable return on invested capital" in PF § 63(4) was a standard reflecting generally the levels of return earlier approved by OED and, consequently, an appropriate guideline for the new regulatory tariffs for future Gassled contracts (supra no. 14). However, the Gassled decision is not an authority on the interpretation of PA § 4-8(2).

Even if PA § 4-8(2), and TPA § 9(3) in fine, uses much of the same terms as PF § 63(4), the Gassled decision does not address the question of how to apply PA § 4-8(2) and the criteria therein to an individual contract for third party use of field installations in view of the particular facts of that case. The issues then arising are quite different from those addressed by the Supreme Court, and the Court wisely concluded that PA § 4-8(2) was not applicable in the Gassled tariff case. Moreover, in contrast to the Gassled decision on the use by OED of its discretionary power pursuant to PF § 63(4), a decision by OED applying PA § 4-8(2) to a particular case remains subject to ordinary court review based on the general legal rules governing administrative decisions.

3) According to PA § 4-8(2) and TPA § 9(3)6, OED may stipulate or amend agreed or proposed tariffs and other conditions if required to ensure that projects be executed when warranted by proper resource management, and that the owner of the host installation is provided a reasonable profit having regard to investment and risks. The first condition in PA § 4-8(2) warrants a decision by OED "to ensure that projects be executed when warranted by proper resource management". Whether the actual execution of the relevant project is consistent with proper resource management, however, depends on the facts of the particular case. This is to be decided independently of the principle of the Gassled decision that, in general, low tariff levels for existing infrastructure is justified as a measure to generally promoting proper management of the resource at the Norwegian continental shelf. **(40)**

A second or alternative condition warrants a decision by OED "to ensure that … the owner of the host installation is provided a reasonable profit having regard to investment and risks". Generally, OED policy is to limit the returns on infrastructure investment, and thereby the level of tariffs, to achieve that the major part of earnings from the exploitation

activities of a license group be retained by this group and not used to cover high tariffs to the license group owning the infrastructure used (supra note 40). In principle, this applies also to particular tariffs for third party use of field installations, cf. TPA § 4(2) which actually constitutes a guideline for the interpretation of the provisions in TPA § 9(3). **(41)** However, the tariff level in a particular contract for third party use of field installations actually depends on the provisions in TPA § 9(3) as applied to the facts of the case at hand and, consequently, the result is largely a cost-based tariff. The flexibility inherent in the terms applied by TPA § 9(3) means that the character of TPA regime essentially is quite different from the Gassled regime.

PA § 4-8(2) and TPA § 9(3) imply that the tariff for third party use of existing infrastructure shall cover repayment of cost and invested capital, and give the owner a profit not exceeding a "reasonable return". In the Gassled case (supra no. 14), the Supreme Court referred to the level of return in pipeline-cases previously approved by OED as a standard for a reasonable level of return on invested capital at the end of the license period. In the context of TPA § 9(3) this means that the net present value of the total payments according to the tariff for the third party services during the entire contract period is not to reflect a level of real return before tax to the owner in excess of ca. 7 % of the capital invested in the infrastructure actually used. **(42)** However, such a standard is not easily applicable to third party use of field installations.

One of the major difficulties is that the capital invested in the field installations consists of both the initial investments made by the owner when developing his field and the additional the investments required for third party use of the installations. According to TPA § 9(3), the tariff level shall allow repayment of the latter investments, if actually covered by the owner of the installations, with a reasonable return on such capital, not exceeding OED's target level of 7 % real return after tax. However, difficult questions of deduction may arise if either the owner or any other third party also has obtained economic benefits by the use of the additional capacity invested at the field installation (TPA § 9(3) third point).

On the other hand, the initial investments by the owner, not prompted by the third party use, are generally irrelevant for the tariff level. The owner indirectly receives the expected return on his initially invested capital by handling own production at reduced cost at the installation, and continues to do so until the expiry of the license period. While the third party using the installations to some extent also derives benefits from the previous investment of the owner, according to TPA § 9(3) this advantage may only justify that some additional element of profit to the owner be included in the tariff. **(43)**

16 Structural changes in the petroleum sector

1) During the first 25 years, the Norwegian petroleum and offshore industries gradually developed to become a major part of the national economy. This was mainly due to heavy involvement by the large international oil companies and to the roles of Statoil as the holder of the over-all state participation interests and the operator of nearly 70 % of the license groups. At the entry of the new century, however, the situation was different.

The Norwegian petroleum sector was no longer equally attractive to the already established international companies, in number also significantly reduced by international mergers and take-overs. **(44)** Recurrent unrest in the international oil and gas markets as well as in the financial markets was generally detrimental to further investments in a high-cost Norwegian petroleum sector. On the contrary, this initiated restructuring of and sales of Norwegian portfolios. Contributing significantly to this development was also the gradual structural changes in the Norwegian resource base such as decline of production from existing fields, growing uncertainty as to future substantial discoveries and developments, and the lack of encouraging results of exploration activities. In brief, other

countries apparently offered better opportunities to many international companies.

The contemporary reorganization of the state participation, then constituting ca. 2/3 of the total petroleum activity, aggravated the impact of the new trends. Unavoidably, the legal split between the state and Statoil, and the restructuring of Statoil into an ordinary commercial oil company (supra nos. 11, and 13–14), would significantly affect Statoil's previous role as a major driving force in the development of the Norwegian petroleum industry. In this context, the new manager of the SDFI Petoro, generally contained by state profit assessments and severe restrictions on resources and commercial activities, was no adequate substitute for Statoil (supra no. 13). Essentially, the new framework for the overall national participation in the petroleum sector implied that, generally, future developments of the petroleum industry based on Statoil and SDFI portfolios would largely depend on commercial considerations and assessments of project profitability much of the same kind as also applied by the international oil companies. Seemingly, the current discussion on new costal terminals for landing and processing of petroleum in Northern Norway is illustrating this (infra no. 19).

2) Consequent on structural changes in the international and national petroleum industry and the Norwegian resource base, combined with shifting oil and gas markets, during the recent 20 years the maintaining of the level of activities in the petroleum and offshore industries has surfaced as the paramount objective of Norwegian resource management policy. The recipes prescribed are (1) to maintain the level of production by improving recoveries from producing fields including adjacent resources, (2) to have remaining discovered small or medium-sized fields developed, (3) to encourage exploration activities in both matured and new areas, and (4) to promote reliable capacity at existing infrastructure for new discoveries and developments. **(45)** However, achieving all this is not primarily a regulatory task. Much depends rather on activities of existing license groups such as enhancing production and production periods, exploring acreage adjacent to existing fields and developing small and medium-sized fields already discovered. Fresh entries by new

international or national companies to initiate new exploration and development activities, however, presupposed new regulatory responses and adjustments of regulatory policies previously pursued.

While wanting to retain the key position of existing licensed companies, an initial regulatory response by the government was to allow also less resourceful international and national companies to acquire participation interests in the Norwegian sector, particularly in areas with resources awaiting further development or exploration. **(46)** Achieving a diversified and broader mix of companies active in the petroleum sector soon became a key regulatory policy to sustaining the activity level in the petroleum and offshore industries. **(47)** This meant that regulatory practice had to be modified since most newcomers did not fully possess the technical and financial resources traditionally required for acquiring participation interests, either by second-hand transfers of licensed interests approved according to PA § 10-12 or by new licenses granted of according to PA §§ 3-3 and 3-5. Notwithstanding frequent trading of participation interests in successful discoveries to more resourceful companies prior to development, at present several of these companies are also operators at new field development.

This liberalization of OED's regulatory practice promoted high activity and trading in both the primary and the secondary markets for participation interests in Norwegian licenses. For the international oil companies, including also Statoil, this facilitated comprehensive restructuring or reductions of the existing Norwegian portfolios acquired over the years, even by transfer of such portfolios to other international groups. **(48)** At the same time a number of new companies acquired participation interests in both old and new licensed areas, particularly in the southern and matured parts of the continental shelf where reliable third party access to cost-saving use of existing infrastructure existed (supra no.15). The result was that numerous new companies became a large permanent, but not necessarily stable segment of the Norwegian petroleum industry. Unavoidably, this also caused new regulatory problems to surface (infra nos. 17 and 18)

17 State refund of exploration costs

For the government, attracting new companies to diversify and broaden the company mix in the petroleum sector was of particular importance to continuously maintaining a high level of efficient exploration of the Norwegian resources. **(49)** According to the petroleum tax regime, exploration costs are deductible when calculating the companies' taxable net income from licensed activities. This means that, essentially, an established company with petroleum producing fields itself has only to cover the 22 % of its exploration costs in excess of the tax value of the exploration costs actually deducted, equal to 78 % thereof. Nevertheless, many of the established oil companies were at times with high rates in drilling-rig market reluctant to continue their exploration activities or to assume the exploration obligation attached to new licenses. In general, low exploration activities prevailed during the years after the collapse of oil prices in the aftermath of the financial crises in 2008 and during the subsequent period of price uncertainty.

For a company having received a fresh license the situation is different, except if the new company also has acquired interests in producing fields generating sufficient taxable petroleum income. To remove this difference and barrier to new entries as well as to ease the financial strains on newcomer-companies, since 2007 the petroleum tax act § 3 letter c) gives such companies claims against the state for refund of an amount equal to the tax value of its yearly deductible exploration costs. However, a refund claim is limited to the actual amount of deficit according to the company's annual accounts, meaning to the extent that the taxable income is insufficient to cover the yearly exploration costs. Pending refund claims may also serve as security for bank loans to cover yearly exploration costs.

The prevailing view is that this refund arrangement is consistent with the rules on state support in EEA agreement article 61. Essentially, it means that the state, while bearing the exploration risk in the short term, also has a substantial upside by taxable long-term petroleum income

from actual discoveries. The results of this exploration strategy proved to be more than satisfactory. **(50)**

18 Removal of field installations

1) The substantial increase in the trading of existing licensed interests in the second hand market is a consequence of the structural changes in the Norwegian petroleum industry. The change of ownership to a participation interest in a joint group license, however, is not only a matter of concern for the two parties to the transaction. The change may also have consequences affecting the interests of the other members of the joint license group.

Generally, the group members have a shared but internally joint liability for the joint venture activities (JVA article 7, supra no. 2), and for the state's economic claims due to licensed activities a rule of joint and several liability also apply (PA § 10-8). This means that the failure of a member to cover his share of JVA liabilities entails additional liability for the others, and that the risk of additional liability depends mainly on the financial resources of each group member. Consequently, a transfer by a member of his licensed interest to a new participant may alter the risk position of the other members. This usually is the case where licensed interests are transferred in the second- hand market by an established resourceful oil company to one of the new financially weaker company approved or licensed by OED (supra no. 16).

For the parties to the transfer, the direct effect merely is a change of ownership to the licensed interest transferred. For the other members of the licensed group, however, such a transaction also means a shift of debtor, which generally affects the risks of additional JVA liability in respect of joint venture liabilities incurred subsequent to the transfer. An increased risk exposure for the other group members is particularly apparent where an established company, reducing its Norwegian port-

folio by transfers of licensed interests in developed fields with declining production, because after such transfer its pending obligations relating to future removal of the existing field installations according to PA chapter 5 actually rests with the new group member. Accordingly, the importance of questions relating to removal of installations and liabilities for removal cost is increasing, particularly because the termination of production at many of the fields is no longer only a distant problem.

The rules on removal of field installations are set out in PA chapter 5. The duty of a license group to remove field installations arises on termination of production as and when decided by OED (PA § 5-3(1)). The group participants at the time of the removal decision, including any member having previously acquired his licensed interest, have a duty to implement the decision made by actual removal of the installations (PA § 5-3(2) and (6)). This also means that, according to JVA article 7, each member has to cover his share of the joint venture cost incurred thereby. However, the removal cost is deductible in the companies' taxable net petroleum income and, essentially, the state itself has to cover the tax value of the costs deducted, equal to 78 % (supra no. 17). Thus, each group member is only liable for the remaining 22 % of his share of the removal cost, including his share of amounts not paid by other members.

2) That each member is able to actually cover his part of the joint venture removal-cost according to PA § 5-3(2), consequently, is important both for the other group members (JVA article 7) and for the state itself (PA § 5-3(6)). However, attracting new companies to diversify and broaden the company mix in the petroleum sector, has hardly been feasible unless even new companies with limited financial resources be allowed to acquire licensed interests, including interests transferred from established companies (supra nos. 16 and 17). A shift of JVA debtor by substitution of an established oil company by such a new company, however, implies the risk that covering the share of the removal cost allocated to the new member of the license group, in the end becomes the task of the other members of the group or of the state itself.

To counter this risk, in 2009, a new sub-paragraph (3) was inserted in PA § 5-3. This provision imposes an additional, but subsidiary economic

liability for removal cost on the company having transferred its participation interest in a joint group license, and provides that, subsequent to the transfer, this company continue to be so liable towards the other group members or the state. **(51)** This subsidiary liability applies if the new holder of the licensed interest fails to cover his part of the cost as incurred when implementing a future removal decision by OED, but the liability of the transferring company are subject to a deduction of the tax value of actually incurred removal cost. **(52)**

3) Most of the licensed companies in the Norwegian petroleum sector are subsidiaries in international oil company-groups. A shift of ownership to the licensed interests held by such subsidiaries may indirectly also result from various corporate transactions by which the mother-company transfers its ownership control of the licensed company and its activities as a whole to another (mother-) company or company group. Such transactions requires approval by OED (PA § 10-12). However, they do not affect the formal position or obligations of the licensed company as holder of its licensed interests and member of the JVAs and the company responsible for a share of the removal cost. For the mother company, consequently, such transactions do not entail any liability for removal cost according to PA §§ 5-3(2) or 5-3(3). **(53)**

Corporate transactions shifting the ownership control of licensed companies have so far generally meant that an established national or foreign mother-company with adequate financial strength be replaced as owner and mother-company by a new national or foreign oil company or company group with limited resources to support the activities of its new subsidiary. In particular, this is likely to be the case if the licensed company belongs to an oil company group wanting to terminate its Norwegian operations, or a substantial part thereof, by transferring its Norwegian subsidiary with a portfolio of accumulated licensed interests to a foreign oil company group. This presupposes either a direct or an indirect transfer of all the shares in the Norwegian subsidiary or, at least, of a majority of the shares sufficient to establish ownership control of the subsidiary. In any event approval by OED is requires (PA § 10-12).

Transactions of this kind may be of consequence not only for the current activities pursuant to the licensed interests held by the subsidiary, but also have effects primarily appearing at some future time when the obligations of the subsidiary relating to the removal of installations established pursuant to the licenses concerned is to be performed (PA § 5-3(1) and (2). Consequently, such corporate transactions may cause future problems like to those addressed by the provisions on subsidiary economic liability contained in PA § 5-3(3). Since PA § 5-3(3) does not apply to such corporate transaction, OED may in its approval of the transaction according to PA § 10-12 insert conditions by which the company actually transferring directly or indirectly the ownership control of the subsidiary to another company or group assumes a largely equivalent subsidiary economic liability for removal cost. **(54)**

To promote legal certainty, OED has elaborated a set of standard guarantee conditions for use in such approvals. **(55)**However, it is for OED to decide at its discretion whether to insert these conditions in particular approvals, balancing the risk that removal cost becomes a state responsibility, and the likely effect on the second-hand market transactions of strict application of the standard guarantee conditions. **(56)**

19 The petroleum industry at the political junction

1) A high level of exploration activities to discover new resources is a key element in the present strategy to generally maintaining the petroleum and offshore industries important role in the national economy. A prerequisite is that ample quantities of acreage continuously is available for new explorations. However, the mature areas of the North Sea or Norwegian Sea still contain undisclosed resources, mainly limited deposits in redelivered previously licensed acreage.

The situation is different in the largely unexplored areas of the Norwegian part of Arctic waters. **(57)** So far, mainly areas with prospect of large discoveries have be explored by established operators, and a few large fields are already producing or under development. Still at infant stage, the Barents Sea consequently contains much of the acreage required for sustaining new exploration and development activities. This area may be the basis for a new Northern petroleum province, independent of any future uncertainties possibly emerging from the 2010 Borderline Treaty between Russia and Norway. However, there are some "domestic" clouds on the sky.

A main difficulty is the lack of established infrastructure. In the North, the situation is almost as it was in the North Sea prior to establishment in the 1980–90s of land-based terminals for efficient processing and transportation of produced petroleum. For oil produced from large fields offshore loading is the answer, but the proper handling of gas and associated gas obviously remains a major problem. In any event, both the absence of land-based oil and gas terminals, and the prolonged discussion of new terminals mainly as a question of the economy and profitability of a development of particular fields, is likely to hampering future exploration and development of these areas. The present structure of the petroleum industry (supra no. 16 point 1) suggest that this problem hardly is resolvable except by broad regulatory initiatives, e.g. such as actually applied to facilitate the restructuring of the gas transmission system (supra no. 14). Apparently, establishment of permanent petroleum infrastructure is essential also to meeting the expectations in the regions in the Northern coastal areas to actually deriving long-term benefits from the exploitation of the neighboring petroleum resources. **(58)**

Another important problem related to petroleum activities in Northern waters is to avoid detrimental consequences for the increasingly important fishing industry. In relation to current petroleum activities in other areas of the continental shelf, this has proved to be a manageable problem. However, in other areas including the Barents Sea, it constitutes also a part of the general environmental questions on the relation between and coexistence of wildlife and the petroleum industry. No doubt, envi-

ronmental considerations are likely to contribute to limitations on future exploration activities in the Barents Sea.

The prevailing view in Norway is that environmental considerations is a significant part of regulatory policies (PA § 10-2), although in particular cases disagreement may arise to the consequences thereof. In a Norwegian context, it is also important to distinguish clearly between environmental issues and the by far more important and complex questions currently debated on the relation between continued Norwegian petroleum activities and the need to counter climate change.

2) The prevailing international view is that, generally, there is a need to drastically scaling down or terminating the present worldwide reliance on fossil fuels if the objectives of countering climate change shall be within reach in a not too distant future. In the Norwegian debate on climate change, consequently, the future of the Norwegian petroleum industry has received particular attention, notably because of suggestions that there is an urgent need for planning and implementing of unilateral Norwegian regulatory actions in the petroleum sector. The Norwegian debate on the future of the petroleum industry also covers a wide range of domestic issues.

A *first* question concerns the likely impact of any unilateral Norwegian measures ahead of internationally coordinated actions. Is the impact sufficient to justify a front-runner role for Norway in view of the immediate effects thereof for the present Norwegian society?

The point of departure for a *second* group of issues is that a substantial scale down or eventually early termination of petroleum activities is likely to entail most serious consequence for the Norwegian society, in particular due to the key role in the national economy held by the petroleum activities and the related offshore industry. Are alternative economic activities or industries readily available to fill the gap in the national economy resulting from a reduction of the petroleum and offshore industries? How to replace the substantial tax and incomes from the petroleum sector received and used by the state itself to meet its obligations in a modern society? However, the extent to which such scenarios also are to surface as unavoidable consequences of climate change

depends generally on future international actions and commitments. In any event, major restructurings of the national economy and state finances is a time-consuming operation, requiring also a most difficult harmonization of a variety of national interests.

A *third* group of issues concerns developments in the petroleum industry itself. One question is whether future exploration and developments in the petroleum sector is justified in light of risk exposures attached to the invested capital. At present, the current policy for the petroleum sector is to avoid substantial and continuous decline in existing level of activity (supra nos. 16 and 17). Another question is whether the regulatory measures to curtail or terminate production from national fields are available and applicable. For a country like Norway, having repeatedly marketed itself as a reliable long-term exporter of oil and gas, resorting to unilateral measures is not easy.

3) Developments in national and international politics have essentially placed the future of the national petroleum and offshore industries in a political junction where various policy makers and interests open for several, but different exits. In the junction, however, there is also the option to go ahead and stay in the roundabout until it has become clear, also in the view of others circling therein, which exit is to be preferred. A fair guess is that Norwegian petroleum activities still has a long-term future, although not necessarily also an entirely bright future.

Notes

1. Petroleumsloven (PA) §§ 1 til 3. In this chapter I have to large extent relied on views expressed in:
   - *Hammer, Stang, Bjelland, Bustnesli & Bjøranger Tørum,* Petroleumsloven, 2009 (*Kommentarer til Petroleumsloven*),
   - *Selvig*, Petroleumsrett til studiebruk, 1988 (*Petroleumsrett til studiebruk*), in particular §§ 1, 2 and 11 to 19.
2. Ot. prp. nr. 72 (1982–83) p. 7 og Ot.prp. nr. 43 (1995–96) p. 9.
3. Kommentar til Petroleumsloven p. 158–63.
4. Kommentar til Petroleumsloven p. 132–40.
5. Petroleumsrett til studiebruk p. 25–27.
6. Tveit, Praktiske kommentarer til standard samarbeidsavtale, MarIus no. 438 (2016).
7. Petroleumsrett til studiebruk p. 27–30 and p. 31–33.
8. Petroleumsrett til studiebruk p. 26 and 32.
9. Petroleumsrett til studiebruk p. 34–36.
10. Petroleumsrett til studiebruk p. 61–64.
11. Kommentar til Petroleumsloven p. 265–66.
12. Petroleumsrett til studiebruk p. 34, 71–73, 78–80, cf. p. 338–52, Kommentar til Petroleumsloven p. 29.
13. Petroleumsrett til studiebruk p. 25–27 and 47–49.
14. Petroleumsrett til studiebruk p. 27–30.
15. *Selvig,* The State's Direct Financial Interests in Petroleum Licenses, in SIMPLY 2001 (MarIus 281) p. 199, at p. 204–08, cf. Petroleumsrett til studiebruk p. 30–31.
16. Ot. prp. nr. 63 (1994–95).
17. *Selvig* op.cit. note 15 p. at p. 209–10.

18. St. meld. nr. 46 (1986–87) p. 64–65.
19. Petroleumsrett til studiebruk p. 76–77 og 456–57.
20. Innst. S. nr. 267 (2001–2002) and Ot.prp. nr. 81 (2001–2002), particularly p. 6–7.
21. *Selvig* op.cit. note 15 p. at p. 210–15.
22. St. prp. nr. 36 (2000–2001) Eierskap i Statoil og fremtidig forvaltning av SDØE parts 5–8, cf. Innst. S. nr. 198 (2000–2001).
23. Innst. S. nr. 267 (2001–2002) p. 2 and Ot.prp. nr. 81 (2001–2002), particularly p. 6–7.
24. St. prp. nr. 36 (2000–2001) Eierskap i Statoil og fremtidig forvaltning av SDØE part 5–8, cf. Innst. S. nr. 198 (2000–2001).
25. Innst. S. nr. 267 (2001–2002) p. 2.
26. St. prp. nr. 36 (2000–2001) Eierskap i Statoil og fremtidig forvaltning av SDØE part 5, Ot. prp. nr. 48 (2000–2001) p. 2.
27. St. prp. nr. 36 (2000–2001) Eierskap i Statoil og fremtidig forvaltning av SDØE p. 32 and part 8, cf. Ot. prp. nr. 81 (2001–2002) p. 6–7.
28. St. prp. nr. 36 (2000–2001) Eierskap i Statoil og fremtidig forvaltning av SDØE part 7, cf. p. 51–53.
29. St. prp. nr. 36 (2000–2001) Eierskap i Statoil og fremtidig forvaltning av SDØE part 7, cf. Ot.prp. nr. 48 (2000–2001) p. 8- 9.
30. St.meld. no. 38 (2003–2004) p. 59–60. An informative account of the establishment of Gassled is set out in the decision June 30, 2017 in the Gassled tariff case by Borgarting Court of Appeal (16-005707ASD-BORG/01) p. 14–20. This decision was subsequently affirmed by the Supreme Court (HR-2018-1258-A), discussed below.
31. St. prp. nr. 36 (2000–2001) Eierskap i Statoil og fremtidig forvaltning av SDØE part 9, p. 70 sq.
32. PF § 66, cf. Kommentar til Petroleumsloven p. 328–29 and 347–56.

33. Meld.St. no. 28 (2010–2011) s. 65–67. For extensive outlines of the regulatory regime on access to the gas transmission system, see Kommentar til Petroleumsloven p. 328–39, and the comments to PF chapter 9 prepared by OED and set out in the attachment "Merknader" (III?) to the PF.

34. An informative account of the elaboration of regulatory tariffs for Gassled (cf. PF § 63) and earlier tariffs for various parts of the gas transmission system is included in the decision June 30, 2017 in the Gassled tariff case by Borgarting Court of Appeal (16-005707ASD-BORG/01) p. 10–20. This decision was subsequently affirmed by the Supreme Court (HR-2018-1258-A), discussed below.

35. Meld. St. no. 28 (2010–2011) p. 65, cf. St. Meld. no. 46 (1986–87) s. 68 and Petroleumsrett til studiebruk p. 397–99.

36. HR-2018-1258-A. For a discussion of this decision, see *Selvig*, Tariffsaken i Høyesterett, foredrag Petroleumsjuridisk seminar 2018, https://event.scanone.no/petsem2018/presentasjoner.

37. Ot.prp. no. 46 (2002–2003) part 2.4 (p. 16), cf. p. 26–27. Two minor changes in PA § 4-8(2) appears in Ot.prp. no. 48 (2008–2009) p. 2–4 and 10–11. – PA § 4-8(1) was already modernized by Ot.prp. no. 81 (2001–2002) p. 6–7.

38. The general policy basis for the TPA-regulation (2005) appears in St.meld. no. 38 (2003–2004) p. 57–59 and Ot.prp. no. 48 (2008–2009) p. 2–4, cf. Petroleumsrett til studiebruk p. 395–96.

39. For an extensive discussion of the provisions in the TPA regulation (as revised in 2013), see *Selvig,* Tredjepartstariffer ved bruk av eksisterende infrastruktur, MarIus no. 472 (2016), cf. also the outline of the TPA regulation (2005) in Kommentar til Petroleumsloven p. 339–44 (2009).

40. For a general discussion of this principle, se St.Meld. no. 46 (1986–87) chapt. 12, cf. Petroleumsrett til studiebruk p. 397–405 and Meld. St. no. 28 (2010–2011) p. 68–69, emphasizing the need generally to limit profits based on ownership to existing infrastructure, cf. supra note 35.

41. *Selvig,* op.cit. note 39, p. 16–19.

42. *Selvig,* op.cit. note 39, p. 18–19.

43. *Selvig,* op.cit. note 39, p. 26–29, cf. p. 35–38.

44. In 2002, there was only six of the traditional companies left to participate as owners in Gassed, cf. St.meld. no. 38 (2003–2004) p. 60. Hydro, soon selling its petroleum portfolio to Statoil, also disappeared.

45. St.meld. no. 38 (2003–2004) part 3 (p. 16–20), Meld.St. no. 28 (2010–2011) part 2, 4.6 and 4.7.

46. St.meld. no. 38 (2003–2004) p. 40–44.

47. Meld.St. no. 28 (2010–2011) p. 26–30 and 31–32.

48. In recent years, Norwegian participation interests or portfolios thereof have occasionally also been the subject of transactions in the international capital markets.

49. Meld.St. no. 28 (2010–2011) p. 27, cf. St.meld. no. 38 (2003–2004) p.41 and 43, and Ot.prp. no. 48 (2008–2009) s. 3–4.

50. Meld.St. no. 28 (2010–2011) p. 20–21.

51. Ot.prp. no. 48 (2008–2009) p. 4–5.

52. For a discussion of the detailed rules in PA § 5-3(3) on the conditions for and calculation of the subsidiary liability of the transferring company, see Ot.prp. no. 48 (2008–2009) p. 8–9 and 12–13, Kommentar til Petroleumsloven p. 442–49, and *Selvig,* Rettighetshaver- og morselskaps-ansvar ved omsetning av deltakerandeler i tillatelser etter petroleumsloven, Marius no. 500 (2018) p. 28–46.

53. *Selvig,* op.cit. note 52, at p. 22–23 and 47–50.

54. Ot.prp. no. 48 (2008–2009) p. 13.

55. For a discussion of the content of the standard guarantee conditions, see *Selvig*, op.cit. note 52, at p. 51–64.

56. *Selvig,* op.cit. note 52, at p. 52–54.

57. See, generally, the outline in St. meld. no.38 (2003–2004) part 3 and Meld.St. no. 28 (2010–2011) part 2.

58. Cf. the cautious remarks in Meld.St. no. 28 (2010–2011) s. 74.

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